United States Postal Service *and* Kathy O'Toole

National Rural Letter Carriers' Association *and* Kathy O'Toole. Cases 28–CA–19175(P), 28–CA–19618(P), and 28–CB–6075(P)

October 25, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On February 17, 2005, Administrative Law Judge Gregory Z. Meyerson issued the attached decision. The Respondent Union and the Respondent Postal Service, each filed exceptions and a supporting brief. The General Counsel filed cross-exceptions, and a supporting brief. The Respondent Union and the General Counsel each filed an answering brief and a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified[2] and set forth in full below.

The Respondent Union (the Union) represents rural letter carriers employed by the Respondent Postal Service (the Postal Service) in a nationwide bargaining unit. The Postal Service operates training academies throughout the country where new hires learn how to perform the duties of a carrier. The instructors at these academies are carriers who teach several 3-day training sessions annually and who otherwise perform regular carrier duties. The Postal Service posts instructor vacancies at Postal Service facilities within commuting distance of an academy. The Postal Service and the Union jointly select the instructor from among the carriers who apply for the vacancy.

In the early 1990s, the Postal Service and the Union negotiated a guideline applicable throughout the nationwide bargaining unit whereby only union members could be selected as instructors. The judge found that the Respondents violated the Act by maintaining the guideline and by enforcing the guideline against two employees, Kathy O'Toole and Jeffrey Houlter. We affirm these findings.[3]

The judge's recommended Order requires that the Respondents offer O'Toole reinstatement to the instructor position and offer Houlter appointment to the instructor position. We affirm these provisions in the recommended Order.[4]

The judge's recommended Order also provides a reinstatement-appointment remedy for any other employees at the Kachina station who were removed from the instructor position or were denied appointment to the instructor position because they were not union members. For the reasons set forth below, we do not affirm this provision in the recommended Order.

A prerequisite for the finding and remedying of an unfair labor practice is that the unfair labor practice either be alleged in the complaint or fully and fairly litigated. See *Cibao Meat Products*, 338 NLRB 934, 935 (2003), enfd. mem. 84 Fed. Appx. 155 (2nd Cir. 2004), cert. de-

[1] The Union has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In addition to the modifications discussed below, we shall modify the judge's recommended Order to conform to the requirements of *Indian Hills Care Center*, 321 NLRB 144 (1996), as revised in *Excel Container, Inc.*, 325 NLRB 17 (1997).

[3] We also affirm the judge's findings, for the reasons set forth in his decision, that the Respondent Postal Service violated Sec. 8(a)(1) of the Act by interrogating its employees, by threatening its employees, and by informing them that (1) they could reapply for a position as an instructor if they rejoined the Union and (2) that they must be members of the Union in order to be selected for, or retain, the instructor position. There are no exceptions to the judge's dismissal of allegations that the Postal Service discriminated against O'Toole by denying an annual leave request and by threatening O'Toole regarding the annual leave request.

We agree with the judge, for the reasons cited in his decision, that the matter of assignment to the instructor position is a term of employment so that the Respondents' discrimination against O'Toole and Houlter regarding assignment to the instructor position violates Sec. 8(a)(3) and 8(b)(2). In affirming the judge's conclusion that assignment to the instructor position is a term of employment, we also note that assignment to the instructor position constitutes work assignment and that work assignment is a term of employment. See *E.I. DuPont & Co.*, 303 NLRB 631 (1991) (removing overtime clerk duties that constituted only one percent of employees' total work hours is change in employment terms); *Christopher Street Owners Corp.*, 294 NLRB 277 (1989), enfd. mem. 926 F.2d 1215 (D.C. Cir. 1991) (adding distribution of postal service packages to apartment house porter's duties is change in employment terms); *Flatbush Manor Care Center*, 316 NLRB 201, 202–204 (1995) (minor changes in porter's duties in retaliation for union activity violates Sec. 8(a)(3)).

[4] In contending that the Board should not have ordered Houlter's appointment to the instructor position, the Union asserts that, when Houlter applied for the instructor vacancy, Houlter was on limited duty due to an injury that restricted the amount of weight he could lift. However, as the judge noted, the Postal Service did not cite this lifting restriction and instead cited only Houlter's non-membership in the Union when it rejected Houlter's application for the instructor position. We also note that the evidence does not show that an instructor's duties included lifting heavy weights or that Houlter could not have performed the duties of an instructor with or without a reasonable accommodation.

nied 125 S.Ct. 497 (2004), and cases cited therein. Here, the complaint alleged discrimination against O'Toole, but did not allege discrimination against any other Kachina station employees.[5] Furthermore, the record establishes discrimination against O'Toole, but does not establish discrimination against any other Kachina station employee. Indeed, there is no evidence regarding the issues of whether, during the 6-month Section 10(b) period preceding the filing of the first unfair labor practice charge, any Kachina station employees (other than O'Toole) were removed from the instructor position or any Kachina station employees applied for any instructor vacancies. Accordingly, the existence of additional Kachina station discriminatees was neither alleged nor fully litigated and we therefore modify the judge's recommended Order to limit the reinstatement-appointment remedy to O'Toole and Houlter.[6]

In providing a reinstatement-appointment remedy for additional unidentified Kachina station discriminatees, the judge relied upon his finding that the complaint sought a reinstatement-appointment remedy for such discriminatees. However, even assuming arguendo that the judge's finding were correct, that finding addressed only the issue of what remedy the complaint sought and did not address the threshold issue of what unfair labor practices the complaint alleged. As noted above, inquiry regarding the finding and remedying of an unfair labor practice is premature until it has first been determined that the unfair labor practice was alleged in the complaint or fairly litigated. Here, as explained above, the unfair labor practice of discrimination against additional unidentified Kachina station employees was neither alleged in the complaint nor fairly litigated. Accordingly, the judge's finding regarding what remedy the complaint sought—that is, that the complaint sought a reinstatement-appointment remedy for additional unidentified Kachina station discriminates—is not a sufficient basis for granting that remedy.[7]

ORDER

The National Labor Relations Board orders that:

A. The Respondent Employer, United States Postal Service, Scottsdale, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing any agreement, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," to the extent that it requires that an employee be a member of the National Rural Letter Carriers' Association ("the Union") in order to serve as a rural letter carrier academy instructor.

(b) Interrogating its employees about their union membership.

(c) Threatening its employees with removal from the position of rural letter carrier academy instructor because they had resigned their membership in the Union.

(d) Informing its employees that they could reapply for a position as a rural letter carrier academy instructor if they re-joined the Union.

(e) Informing its employees that they must be members of the Union in order to be selected for, or to retain, the position of rural letter carrier academy instructor.

(f) Removing its employees from the position of rural letter carrier academy instructor because they are not members of the Union.

(g) Denying appointment of its employees to the position of rural letter carrier academy instructor because they are not members of the Union. and

(h) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

[5] O'Toole worked at the Kachina station. Houlter worked at the Fountain Hills station.

[6] For similar reasons, we reject the General Counsel's request that the recommended Order be modified to provide a nationwide reinstatement-appointment remedy. The issue of such additional removal-denial unfair labor practices was neither alleged in the complaint nor fully and fairly litigated.

Member Schaumber agrees with his colleagues that the issue of similarly-situated discriminatees nationwide was neither alleged in the complaint nor fully and fairly litigated. With respect to similarly-situated discriminatees at the Kachina station, Member Schaumber notes that the judge informed the parties at the hearing that he interpreted the complaint as seeking reinstatement-appointment for similarly-situated Kachina discriminatees. The Respondents did not object to that interpretation. Assuming arguendo that the judge's statements satisfied due process requirements by placing the Respondents on notice to defend against an allegation of similarly-situated Kachina discriminatees, Member Schaumber would find that the allegation was not litigated. As stated above, there is no evidence whether any Kachina station employees other than O'Toole applied for or were removed from the instructor position during the 10(b) period, or that any instructor vacancies were even posted during the 10(b) period at the training facility that serves the Kachina station, other than the posting that prompted Houlter to apply. Therefore, Member Schaumber agrees with his colleagues that the existence of additional Kachina discriminatees was not fully litigated, and he joins his colleagues in rejecting the judge's reinstatement-appointment remedy for unnamed Kachina station discriminatees.

[7] By analogy to refusal-to-hire cases (*FES*, 331 NLRB 9 (2000)), Member Liebman would decline to provide an appointment remedy for additional unidentified Kachina station discriminatees. In *FES*, the Board held that , in refusal to hire cases in which backpay and instatement are sought, litigation of certain issues (e.g., the number of available vacancies, whether the alleged discriminatees had the experience and training relevant to the position, and whether the respondent would have selected better-qualified applicants even absent the alleged discriminatees' union status) may not be deferred to compliance proceedings. Id. at 12, 14. Provision of an appointment remedy for additional unidentified Kachina discriminatees would defer litigation of analogous issues to compliance proceedings.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind the rule that rural letter carrier academy instructors must be members of the Union, remove such rules from any and all employee publications or documents to which it is a party, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," and advise its employees in writing that this rule is no longer being maintained or enforced;

(b) Within 14 days from the date of the Board's Order, remove from its files any reference to the removal of Kathy O'Toole from her position as a rural letter carrier academy instructor, and any reference to the failure to award the same position to Jeffrey Houlter, because they were not members of the Union, and within 3 days thereafter notify O'Toole and Houlter in writing that this has been done;

(c) Within 14 days from the date of the Board's Order, offer to Kathy O'Toole and Jeffrey Houlter full and immediate reinstatement to, or award of, the position of rural letter carrier academy instructor;

(d) Within 14 days after service by the Region, post at each of its facilities located throughout the United States and its territories, where members of the bargaining unit set forth in the complaint are employed, copies of the attached notice marked "Appendix A."[8] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Postal Service's authorized representative, shall be posted by the Postal Service and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Postal Service to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Postal Service has gone out of business or closed any of its facilities where members of the bargaining unit set forth in the complaint are employed, the Postal Service shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Postal Service at such closed facilities at any time since May 24, 2003;

(e) Post at the same places and under the same conditions copies of "Appendix B" as soon as it is forwarded by the Regional Director; and

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Postal Service has taken to comply.

B. The Respondent National Rural Letter Carriers' Association ("the Union"), Alexandria, Virginia, its officers, agents, and representatives, shall

1. Cease and desist from:

(a) Maintaining or enforcing any agreement, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," that requires that an employee of the Respondent Postal Service ("the Postal Service") be a member of the Union in order to serve as a rural letter carrier academy instructor.

(b) Causing the Postal Service to remove its employees from, or denying them appointment to, the position of rural letter carrier academy instructor based on their membership in the Union. and

(c) In any like or related manner restraining, or coercing the Postal Service's employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the rule that rural letter carrier academy instructors must be members of the Union, remove such rules from any and all employee publications or documents to which it is a party, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," and advise the Postal Service's employees in writing that this rule is no longer being maintained or enforced.

(b) Notify the Postal Service in writing that it has no objection to the reinstatement of Kathy O'Toole to the position of rural letter carrier academy instructor and the award to Jeffrey Houlter of the same position with copies to the affected employees.

(c) Within 14 days after service by the Region, post at each of its business offices and meeting halls located throughout the Unites States and its territories copies of the attached notice marked "Appendix B."[9] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Union's authorized representative, shall be posted by the Union and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Furnish to the Regional Director signed copies of the aforesaid notice for posting by the Postal Service. Copies of the notice to be furnished by the Regional Director shall, after being signed by the Union be forthwith returned to the Regional Director; and

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Union has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations not found.

Dated, Washington, D.C. October 25, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT maintain or enforce any agreement, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," to the extent that it requires that you be a member of the National Rural Letter Carriers' Association ("the Union") in order to serve as a rural letter carrier academy instructor.

WE WILL NOT interrogate you regarding your or other employees' union or concerted activities, such as whether or not you are a member of the Union.

WE WILL NOT threaten you with removal from your position as a rural letter carrier academy instructor because you resign from, or refuse to join, the Union.

WE WILL NOT inform you that you must be a member of the Union in order to be selected for, or to retain, the position of rural letter carrier academy instructor.

WE WILL NOT remove you from, or deny you appointment to, the position of rural letter carrier academy instructor because you resigned from, or refused to join, the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL rescind the rule that rural letter carrier academy instructors must be members of the Union, remove such a rule from any and all employee publications, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," and advise you in writing that such a rule is no longer being maintained or enforced.

WE WILL remove from our files any reference to the removal and/or rejection of Kathy O'Toole and Jeffrey Houlter from or for the position of rural letter carrier academy instructor because of their non-membership in the Union; and WE WILL notify each of them in writing that this has been done.

WE WILL offer Kathy O'Toole and Jeffrey Houlter full and immediate reinstatement to, or award of the position of rural letter carrier academy instructor.

UNITED STATES POSTAL SERVICE

APPENDIX B

NOTICE TO MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT maintain or enforce any agreement that requires that you be a member of the National Rural Letter Carriers' Association ("the Union") in order to serve as a rural letter carrier academy instructor, including, but not limited to, such a rule as set forth in the "National Guidelines for the Quality of Work Life/Employee Involvement Process."

WE WILL NOT cause the United States Postal Service to remove you from, or deny you appointment to, the position of rural letter carrier academy instructor because you resigned from, or refused to join, the Union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights set forth above.

WE WILL rescind the rule that rural letter carrier academy instructors must be members of the Union, remove such a rule from any and all employee publications, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," and advise you in writing that such a rule is no longer being maintained or enforced.

WE WILL notify the United States Postal Service in writing that we have no objection to the reinstatement of Kathy O'Toole to the position of rural letter carrier academy instructor and the award to Jeffrey Houlter of the same position; and WE WILL send copies of that correspondence to those employees.

NATIONAL RURAL LETTER CARRIERS' ASSOCIATION

Mara Louise Anzalone, Esq., for the General Counsel.
Nicole Decrescenzo, Esq., of Long Beach, California, for the Respondent Employer.
Michael J. Gan, Esq., and *Jean Marc Favreau, Esq.*, of Washington D.C., for the Respondent Union.

DECISION

STATEMENT OF THE CASE

GREGORY Z. MEYERSON, Administrative Law Judge. Pursuant to notice, I heard these cases in Phoenix, Arizona, on September 28, 29, and 30, and November 15 and 16, 2004. Kathy O'Toole, an individual (the Charging Party or O'Toole), filed an original and an amended unfair labor practice charge in Case 28–CA–19175(P) on November 24 and December 24, 2003, respectively. O'Toole filed an unfair labor practice charge in Case 28–CB–6075(P) on January 8, 2004. On August 30, 2004, O'Toole filed an unfair labor practice charge in Case 28–CA–19618(P). Based on those charges as amended, the Regional Director for Region 28 of the National Labor Relations Board, issued a Third Amended Consolidated Complaint and Notice of Hearing (the complaint). The complaint alleges that the United States Postal Service (the Postal Service, the Employer, or the Respondent Employer) violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act). Further, the complaint alleges that the National Rural Letter Carriers' Association[1] (the Letter Carriers', the Union, or the Respondent Union) violated Section 8(b)(1)(A), and 8(b)(2) of the Act. The Respondent Employer and the Respondent Union (collectively called the Respondents) each filed a timely answer to the complaint denying the commission of the alleged unfair labor practices of which they were, respectively, accused.

All parties appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally and file briefs. Based upon the record, my consideration of the briefs filed by counsel for the General Counsel, counsel for the Postal Service, and counsel for the Union, and my observation of the demeanor of the witnesses,[2] I now make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. JURISDICTION

The Respondent Employer provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function, including its facility located at 7339 East Williams Drive, Scottsdale, Arizona, herein called the Respondent Employer's facility. The Board has jurisdiction over the Respondent Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209. Also, the complaint alleges, the Respondents' answers admit,[3] and I find that the Postal Service is an employer subject to the jurisdiction of the Board.

Further, the complaint alleges, the Respondents' answers admit, and I find that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Dispute

It is the position of the General Counsel that the Respondents are parties to a "contract clause," which gives preferential treatment to union members in violation of Section 8(a)(1), 8(b)(1)(A), and 8(b)(2) of the Act. This clause is contained in successive "National Guidelines," which are agreements that

[1] The correct name of the Union appears as amended at the hearing.

[2] The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits, with consideration given for reasonable probability and the demeanor of the witnesses. See *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

[3] All pleadings reflect the General Counsel's complaint and the Respondents' answers as those documents were finally amended at the hearing.

the Respondents have entered into entitled "Quality of Work Life/ Employee Involvement Process" (QWLEI). As part of this process, the Respondents have established "Rural Carrier Academies" for the principal purpose of training substitute rural carriers. The National Guidelines require that any employee selected as an academy instructor be not only a "rural craft employee," but also, "a member of the NRLCA" (the Union). The General Counsel contends that by requiring union membership as a condition for selection and retention of employees as academy trainers,[4] that the Respondents are giving preferential treatment to those employees who are union members, and, as such, encouraging membership in the Union, in violation of the Act.

It is undisputed that employee Kathy O'Toole was removed from her position as an academy trainer because she resigned her membership in the Union, and that employee Jeff Houtler was denied consideration for a position as an academy trainer because of his non-membership in the Union. The General Counsel contends that such conduct constituted a violation of Section 8(a)(1) and (3), and 8(b)(2) of the Act. Further, the complaint alleges that certain statements and threats made by the Employer's supervisors and agents in support of the requirement that academy trainers be union members, and the interrogation of employees to determine their union membership status were violative of Section 8(a)(1) of the Act.

Also, it is the General Counsel's contention that the Employer violated Section 8(a)(1) and (4) of the Act by refusing to grant a request of Kathy O'Toole for annual leave, because she filed an unfair labor practice charge with the Board and cooperated with the investigation into this matter. Finally, the General Counsel alleges that the Employer's supervisors threatened O'Toole with the denial of annual leave and the loss of other unspecified benefits, because she engaged in concerted activities, all in violation of Section 8(a)(1) of the Act.

It is the position of the Union that the rural letter carrier academies are a product of the collective-bargaining process between the Union and the Employer. These academies were the creation of the QWLEI process, used by the Union and the Employer in a "cooperative spirit" designed to address a wide variety of work place problems. One of those problems is the hiring and retention of qualified substitute carriers, who fill in for absent regular carriers. The academies are designed to give new substitute carriers sufficient instruction to enable them to function comfortably in their new jobs, thus, increasing the likelihood that they will be successful. It is the Union's contention that the academy trainers are an integral part of the collective-bargaining process. They allegedly function as the "eyes and ears" of the Union, bringing to the Union's attention matters that need to be addressed through the collective-bargaining process. They are also, allegedly, the employees who are most knowledgeable in the details of the collective-bargaining agreement and the various other documents to which the Union and the Employer are parties. As such, they are the most qualified employees to instruct the new substitute carriers through the academies. It is for these reasons that the Union claims the requirement that academy trainers be union members serves a legitimate purpose, and is not violative of the Act. The Employer joins in support of the position taken by the Union. Further, the Employer denies that any of the statements made by its supervisors or agents in connection with the requirement that academy trainers be union members in any way constituted the unlawful encouragement of membership in a labor organization, or the interrogation of employees about their union membership.

Regarding O'Toole's request for annual leave, the Employer takes the position that any failure to immediately grant the request was based on legitimate business reasons, specifically the absence of a qualified substitute rural carrier who could service O'Toole's route. The Employer denies any connection between O'Toole's conduct in filing the unfair labor practice charge with Board, and the failure to approve her request for annual leave. Concomitantly, the Employer denies that its supervisors or agents threatened any employees with either a denial of annual leave or a denial of unspecified benefits, because they engaged in concerted activity or filed a charge with the Board and cooperated in the investigation of that charge.

B. Background Facts

For the most part, the background facts in this case are not disputed. The Respondents have had a long collective-bargaining relationship. That relationship has been embodied in successive collective-bargaining agreements, the most recent of which is effective from February 3, 2002 through November 20, 2004, and unless terminated, for successive annual periods. (Jt. Exh. 5.) The Respondents are also parties to a series of other documents, memoranda of understanding, and agreements, the most significant of which, for purposes of this case, are "National Guidelines" entitled "Quality of Work Life/Employee Involvement Process" (QWLEI). During the relevant period in this case, there were two such National Guidelines in effect, the most recent of the two bearing a revision date of March 2004. (Jt. Exh. 1 & 2.) The earlier of the guidelines contains the following clause:

> **Rural Carrier Academies:** The DJSC must monitor all rural carrier academy training and, to the extent possible, should monitor all training given to rural carriers in the district. The DJSC must ensure that the selection of rural carrier academy instructors conforms with the guidelines as provided in EL-710-97-2 Standard Training Program for Rural Letter Carriers, course 44503-00, issued March 18, 1997. In particular, the full committee must review applicant resumes and be involved in the interview process, ensuring that the selectee is a rural craft employee and **a member of the NRLCA**. Selectees must be advised that they cannot act in a managerial capacity as long as they retain the trainer position. (Underscoring added by the undersigned.)

The more recent of the two National Guidelines contains a clause very similar to that quoted above, and specifically contains identical language regarding "ensuring that the selectee is a rural craft employee and a member of the NRLCA." The DJSC referenced above is the District Joint Steering Commit-

[4] The terms trainers or instructors are used interchangeably throughout this decision.

tee, comprised of representatives of both the Union and the Employer.

It is necessary to have some historical prospective in order to understand the QWLEI process. This process was established as a joint effort by the Postal Service and the Union to work toward improving and providing more satisfying and effective jobs and better work environments for members of the bargaining unit. It provides for equal representation by management and labor at all levels, including a National Joint Steering Committee (NJSC), six Area Joint Steering Committees (AJSCs), and the DJSCs. There are in excess of 100,000 employees in the bargaining unit represented by the Union, comprised of both regular rural letter carriers and substitute carriers. Further, the collective-bargaining agreement between the parties is a national agreement. There are no local agreements. Article 19 of the national contract between the Respondents makes reference to other "handbooks, manuals, and published regulations of the Postal Service, that directly relate to wages, hours or working conditions. . . ." It is undisputed that one of those publications is a document entitled "Rural Carrier Duties and Responsibilities," which is also referred to as "Handbook PO-603," dated June 1991. (Jt. Exh. 3.) As the name implies, this handbook is a detailed manual setting forth the specific job requirements for the position of rural letter carrier. It was the undisputed testimony of Scottie Hicks, a former president of the Union, that the collective-bargaining agreement, the National Guidelines for the QWLEI process, and the Handbook PO-603 are all interrelated, and have a direct affect on the wages, hours, and working conditions of the members of the bargaining unit.

According to Hicks, the rural letter carrier academies were originally developed through the QWLEI process. The Postal Service has historically had difficulty in the hiring and retention of substitute carriers. The academies were developed with the intent of providing substitute carriers with sufficient training in the duties of rural carriers, which, it was anticipated, would result in higher retention rates for the substitutes. Under the terms of the collective-bargaining agreement, the regular rural carriers are entitled to take leave in accordance with their personal wishes. If a regular carrier has accumulated leave, the only restriction on that carrier's ability to take the leave as he desires is the availability of a substitute carrier to cover the route. The contract provides that every rural route is to have a substitute carrier assigned to it. (Jt. Exh. 5, Article 30.) This essentially means that each regular carrier is to be assigned a specific substitute carrier, who can service the route when the regular carrier is on leave. Specifically, the contract provides that, "The Employer shall make every effort to expeditiously fill leave replacement vacancies when they occur. Regular rural carriers shall have the right to require that a leave replacement be assigned to their route." However, as noted above, frequently the Postal Service has had difficulty in the hiring and retention of substitute carriers, who work under a different wage structure than the regular rural carriers, and largely without benefits.

According to the testimony of various union officials, at any given time there are numerous routes throughout the country without an assigned substitute carrier. It is, therefore, obviously to the benefit of both the Union and the Employer to increase the retention rate for those substitute carriers who are hired. With that goal in mind, the rural carrier academies were established. Hicks testified that the requirement that academy instructors be union members was negotiated through the collective-bargaining process.

The Union's argument that union members are best able to explain to the newly hired substitute carriers the "intricacies" of the collective-bargaining agreement and the specific duties of a rural carrier will be discussed later in the analysis section of this decision. However, I would simply note now, that the Union contends that members have available to them sources of information not available to nonmembers in the form of the union magazine, union web site, and through the national and state conventions. Further, the Union's contention that the academy instructors are part of the administration of the contract, as they allegedly function as the "eyes and ears of the Union," will also be discussed later in the analysis section.

The Postal Service publishes a training manual for use by the academy instructors entitled "Standard Training Program for Rural Letter Carriers," the most recent of which is dated July 2003. (U. Exh. 4 & 5.) The preface to these manuals indicate that they are the result of a "multi-disciplinary task force" working in conjunction with the Union through the NJSC in the QWLEI process. It is undisputed that the Employer "operates" the rural academies. Sylvia Knisley, a former human resources specialist for the Post Office, testified that she "oversaw" the rural carrier academy in the Phoenix metropolitan area (the Rio Salado Academy). She was responsible, along with a union member of the DJSC, for the selection of applicants to the instructor position. Further, Knisley had overall responsibility for the training program including both the instructors and the newly hired substitute carriers.

The academy class lasts for a period of 24 hours, over three 8-hour days. In the Phoenix metropolitan area, the class is held at the Employer's Rio Salado facility. The position of instructor/trainer is totally voluntary. The position is announced through a job posting, and requires a minimum of 1 years experience as a rural carrier, with employment at an office within commuting distance of the training facility. (GC Exh. 4.) There is no mention in the posting of any requirement that an applicant be a member of the Union. According to Knisley, carriers who are selected for the position serve for a period of 3 years. However, reappointment occurs regularly, and at any given time approximately 300 instructors are serving nationally. Locally, there may be a new class every few months as needed. When not serving as trainers, the carriers perform their regular rural letter carrier duties. Knisley and other witnesses testified that the trainer position is not considered a promotion, and it does not provide any extra pay or benefits for selected individuals. A number of witnesses testified that typically a carrier will apply for the position from a desire to assist new employees in becoming proficient at the craft, from which the trainer derives a feeling of self-satisfaction. Also, it is undisputed that the addition of "trainer" on an employee resume may help a carrier advance to a managerial position within the Postal Service.

Knisley testified that she and usually a union representative on the DJSC would determine whom to select for the instructor position from the group of applicants. In order to do so, they would conduct interviews for the candidates.[5] According to Knisley, the candidates being interviewed were not asked any questions about their knowledge of the collective-bargaining agreement, or to determine their union membership status. However, she candidly admitted that as union membership was a "requirement" for the position, nonmembers who applied would not be considered or interviewed.

In the fall of 2001 Knisely and her Union DJSC partner selected Kathy O'Toole for the position of academy trainer. At the time, O'Toole met all the requirements for the position, including being a member of the Union. O'Toole is a rural letter carrier employed at the Employer's Kachina facility in Scottsdale, Arizona. At the time of the hearing, she had been employed by the Postal Service for approximately 13 years. She first joined the Union in approximately the early part of 1996. O'Toole testified that following an interview, she was selected for the position of academy trainer in September of 2001, at a time when she was still a member of the Union. According to O'toole, her training to become an academy instructor consisted of viewing a class being taught by an experienced instructor. While viewing the experienced instructor, O'Toole never heard any discussion about the collective-bargaining agreement, the grievance filing process, the Union, or the QWLEI process.

During O'Toole's time as an instructor, she received the "Principles of Success" award for her performance as an instructor. It is undisputed that O'Toole was an excellent instructor. She testified that while acting as an instructor she never talked about the Union, discussed the collective-bargaining agreement, or the QWLEI process with her students. In any event, in July of 2002, she resigned from the Union, effective December 10, 2002.

Knisley testified that at some time Henry Garcia, an assistant human resources specialist, informed her that O'Toole had resigned from the Union. According to Knisley, she did not want to lose O'Toole as an instructor, but understood that O'Toole could not remain in the position if she was no longer a union member. She asked Garcia to make certain of O'Toole's status. Later he called back to say that O'Toole had in fact resigned, having indicating to him that she did not know that to be an instructor she had to be a union member.[6] According to O'Toole, Garcia first questioned her about whether she was still a union member in early September 2003. She told him that she had resigned. However, she made it clear to Garcia that she wanted to continue to instruct, and that she would get back to him as to whether she would rejoin the Union. Garcia admits that after questioning O'Toole about her union status, he informed her that all instructors had to be union members. Subsequently, O'Toole called Garcia and told him that while she still wanted to teach, she had decided not to rejoin the Union.

Within a short period of time, Knisley called O'Toole directly. Knisley testified that she told O'Toole she "hated to lose" her, because O'Toole was "one of the best instructors" she had. According to O'Toole, Knisley informed her that if she wanted to be an instructor again, "you'll have to reapply, join the Union first and reapply." It was Knisley's testimony that she ended the conversation by telling O'Toole that she would be getting a letter from the DJSC stating that "she was being pulled as a instructor."

Kenneth Ohman is the Employer's manager of operations programs support. For a time, he served on the DJSC under the QWLEI process. Management and labor representatives from the DJSC had determined that as O'Toole was no longer a member of the Union, she did not meet the requirement for the academy trainer position. The DJSC had received a letter from O'Toole dated September 22, 2003, in which she stated her belief that requiring membership in the Union in order to be a trainer was a violation of the law. She advised the DJSC that unless she was reinstated as an instructor, she would seek assistance from the "labor department." (GC Exh. 12.) As the DJSC co-chair, Ohman responded by letter dated October 17, 2003. In his letter, Ohman pointed out that the National Guidelines for the QWLEI process required that rural academy instructors must be members of the Union. Further, he indicated in his letter that it was the position of the DJSC that such a requirement was lawful. (GC Exh. 13.)

Regarding O'Toole's letter to the DJSC dated September 22, 2003, it is important to note that she had help in preparing that letter. Lorenzo Scruggs is a supervisor in the Kachina station. During the events in question, he was O'Toole's immediate supervisor. According to O'Toole, after she was contacted by Henry Garcia and informed of the requirement that academy instructors be union members, she explained her situation to Scruggs. He was very sympathetic, telling her that requiring union membership to teach was not right, and he offered to call the Board on her behalf. Within a short period of time, Scruggs returned, indicated he had made the call, and informed O'Toole that the Board agent had said that requiring union membership was a violation of the law and she should file an unfair labor practice charge. Scruggs recommended that she file such a charge. In the meantime, he helped her draft the letter to the DJSC dated September 22, 2003, in which she advised that unless she was reinstated as an instructor, she would seek assistance from the "labor department."

Scruggs' testimony regarding this matter was very similar to that of O'Toole. He made it clear by his testimony that he "personally" believed that "it was unfair" of the Postal Service to require union membership in order to be an academy instructor. Apparently Scruggs felt so strongly about this matter that he was willing to "represent" O'Toole, and asked his postmaster, George Niedner, whether he could do so. However, according to Scruggs, Niedner recommended against it because of Scruggs' "position" as a supervisor. In any event, after explaining to O'Toole that he could not "represent" her, Scruggs

[5] While Knisley testified that she conducted certain of these interviews without a union representative being present, these instances were apparently anomalies. As the union witnesses pointed out, the "National Guidelines" provide for union involvement in the interview and selection process for the position of academy trainer. (Jt. Exh. 2.)

[6] For the most part, there is little variance in the testimony of O'Toole, Knisley, and Garcia. Credibility is not an issue between them.

promised that he "would still work with her with anything that came up" in connection with her charge.

Jeffrey Houlter is a rural letter carrier employed at the Fountain Hills, Arizona post office. He has never been a member of the Union. Houlter testified that he has applied twice to be an academy instructor. The first time he applied was in 2001. (GC Exh. 4.) After an interview with Sylvia Knisley, he was accepted. However, at the time his facilitator instructor workshop was to begin, Houlter spoke with both Knisley and Henry Garcia and was told that unless he joined the Union, he could not serve as an instructor. He refused to join, and was required to leave the program.[7]

Houlter applied a second time to be an instructor. By letter dated September 25, 2003, he submitted his application to Sylvia Knisley.[8] (GC Exh. 7 & 8.) Houlter testified that about one week later, he received a call from Knisley.[9] They discussed the requirement that academy trainers be union members. Houlter informed Knisley that he had decided to become a union member, and to that end he had submitted the "paperwork" to the Union. However, since he was not yet a union member, Knisely informed him that he was "disqualified" from applying for the position. Knisley testified substantially in conformity with Houlter. She added that she made a notation on Houlter's application that he was "not a member." (GC Exh. 8.) Knisley testified that this was simply her way of noting on the application that Houlter did not meet the requirement that academy trainers be members of the Union. As an aside, Houlter never did actually join the Union.

There is essentially no dispute that O'Toole was removed from her position as an academy trainer and Houlter was denied the opportunity to so serve only because they were not members of the Union. Neither Respondent seriously argues that either O'Toole or Houlter were otherwise unqualified for the positions.[10] However, the Respondent Employer strongly denies that it took any action against O'Toole, because she filed an unfair labor practice charge with the Board over her removal as an academy trainer.

O'Toole filed her first charge with the Board on November 24, 2003. As Lorenzo Scruggs had encouraged her to file the charge, she informed him that she had done so, and kept him informed on an "ongoing" basis of the status of the case. According to O'Toole, she spoke with Scruggs "at least a dozen times" about the charge. Although Scruggs was discouraged by the postmaster from "representing" O'Toole, Scruggs went so far as to tell O'Toole that he was "willing to testify" in her behalf. They last spoke about the case approximately the middle of May 2004. It was at about that time that the hearing before the Board on O'Toole's first charge was postponed. O'Toole testified that she interrupted a conversation between Scruggs and Georgia Martin, Kachina station manager, to inform Scruggs of the postponement. O'Toole asked whether Martin was aware of the status of her Board charge, and Scruggs responded that he had kept Martin "updated with everything." Martin was Scruggs' immediate supervisor.

According to O'Toole, for the past eight and a half years she has taken vacation every August, generally being gone from work for between two weeks to one month. Previously, she had never had any problem getting her annual leave request approved. On July 10, 2004, O'Toole filled out a leave request for August 9 through 31, 2004, and presented it to Wayne Wilber, the floor supervisor. The following day she had a conversation with Wilber in which she asked him whether he thought she would have any problem having her leave request approved. O'Toole testified that Wilber indicated he did not think so, as, "We have a bunch of new subs coming in, and they should be trained by then."

As noted earlier, under the terms of the collective-bargaining agreement, a regular rural letter carrier has the right to have leave approved on demand. However, that requires that the route have a substitute carrier assigned to it. As of the time she submitted her request for annual leave, there was no substitute carrier assigned to O'Toole's route. The previous substitute carrier for this route had been released by the Postal Service in March 2004. O'Toole testified that she had immediately requested that a new substitute carrier be designated, but that had still not occurred as of the date she submitted her leave request.

According to Georgia Martin, the last substitute for O'Toole's route prior to O'Toole submitting her leave request was fired by the Postal Service. Apparently, O'Toole's route was particularly difficult. Martin testified about the problems the Postal Service has in hiring and retaining a sufficient number of substitute carriers to have all the routes in Scottsdale, Arizona covered. Although the collective-bargaining agreement requires that a substitute carrier be designated within 120 days of a request by a regular carrier, the Employer is simply unable to meet that requirement, at least for the Kachina station.

Martin testified that this shortage sometimes results in regular carriers not being able to take their requested leave. She candidly acknowledged that while the contract provides for leave on demand for regular carriers, she has "got to get the mail delivered and business taken care of," which might mean denying leave requests. According to both Martin and Scruggs, without a substitute of record, a regular carrier's leave request is automatically disapproved, pending the scheduling. The schedules are posted at the Kachina station every Wednesday. Martin and Scruggs testified that even without a substitute of record, every effort is made to accommodate the leave request of the regular carrier, and, if it can be done, to post the schedule with the requested leave ultimately being granted. Sometimes a substitute can be used to cover a route, even when it is not the

[7] This incident occurred outside the 10(b) period, and is not alleged as a violation in the complaint.

[8] The complaint incorrectly gives the date of Houlter's application as October 24, 2003.

[9] This places the incident on about October 2, 2003, rather than October 24, 2003, as alleged in the complaint.

[10] At the time of his second application for the trainer position, Houlter was working "limited duty" as a result of a health condition. In his posthearing brief, counsel for the Union in passing mentions Houlter's alleged physical inability to perform the duties of an instructor. However, Houlter's unrebutted testimony was that at the time of his rejection the only reason given was his non-membership in the Union. Accordingly, there is not a scintilla of evidence to support such a position by counsel for the Union, and I view his reference to Houlter's physical problem as merely gratuitous.

substitute's primary route of record. Also, a regular carrier may improve her own chances of having a leave request approved if the carrier can arrange her own replacement carrier, at least for those days, such as Saturday, which are particularly difficult to cover. In any event, a disapproved leave request may ultimately be granted and the leave posted on the schedule, as long as coverage of the route can be obtained.

O'Toole testified that about July 27, 2004, she heard from Martin that Ken Ohman, the Employer's manager of operations programs support, was asking about her work performance. O'Toole, who had never been disciplined by the Postal Service, found this inquiry odd. At the time, her first charge with the Board was pending. On about the same date, while she was busy working at her case, Scruggs approached and told her, "There might be a problem with your vacation time." However, she did not respond. She had still not received a written response to her leave request. A few days latter, she happened to check the "120-day log" posted near the floor supervisor's desk, which recorded the dates when regular carriers had requested that substitute carriers be named for their routes. She was dismayed to find that her name was not on the list, and immediately went to see Georgia Martin. O'Toole testified that Martin looked at a newer list kept in her office, and said that there was only one person on the list ahead of O'Toole. This was allegedly a copy of the official list, which was maintained at the Fountain Hills postal station. In any event, a substitute carrier of record for O'Toole's route still had not been designated by the date her requested annual leave was to begin.

On about August 3, 2004, O'Toole went to see Scruggs and asked him whether she was going to be able to get off on the days she had requested. Scruggs responded that he was "working on it." Apparently not being satisfied with that answer, O'Toole went to Martin's office and told her that she needed the time off. Martin responded that, "It doesn't look like you're going to get it." O'Toole asked why one of the new substitutes coming to the station could not cover her route. In reply, Martin indicated that she was not going to assign substitute carriers to O'Toole's route, even before they had learned their primary route. They then discussed other options for covering the route, but Martin was not satisfied with any of them.

A day or two later, on about August 5, 2004, O'Toole noticed that the schedule normally posted on Wednesday was not yet available. She approached Scruggs and asked whether he had finished the schedule. He responded that he had not even looked at it yet. According to O'Toole, she was afraid to press the issue, and instead told Scruggs that if it were still a problem to grant her the leave, she would be willing to take only the last two weeks, instead of the three requested. However, Scruggs failed to respond.

At about this time, O'Toole approached union steward Elaine Spearman concerning her problem getting her leave request approved. She and Spearman discussed some alternatives to present to management, and Spearman approached Scruggs. According to Spearman, ultimately management accepted a suggestion that she made that if O'Toole were granted the leave, a substitute carrier who had a primary route, but not a secondary or tertiary route, could be trained on O'Toole's route in her absence.[11]

Spearman candidly testified that regular carriers without a designated substitute are frequently denied requested leave. Also, she indicated that regular carriers enhance their chances of having leave approved, even if they have no designated substitutes, but are willing to find their own replacements. This was something O'Toole was not willing to do, testifying that she felt that obtaining a replacement was the responsibility of management.[12] Further, Georgia Martin offered numerous examples of regular carriers whose requests for leave were also denied, pending scheduling. (Emp. Exh. 3.)

Fearing that her request for annual leave was not going to be approved, O'Toole began to consider other options. She testified that her father was seriously ill, and was scheduled to have medical treatments at the same time that she had planed to visit him during the period of her requested leave.[13] Therefore, O'Toole decided to apply for leave under the Family Medical Leave Act (FMLA), which she felt she was entitled to do, as she intended to take her father for his scheduled medical treatments. She submitted this request for FMLA leave on August 9, 2004, which was the date her leave was to have started under her previous request for annual leave. The FMLA requested leave was to start 1 week later, on August 16, 2004. (Emp. Exh. 5.) This leave was approved, pending the submission of medical documentation, and O'Toole took the leave requested through the FMLA. However, it should be noted that Georgia Martin testified that had O'Toole not applied for FMLA leave, an effort would have still been made to grant her request for annual leave.

At approximately the same time that she applied for FMLA leave, O'Toole filed a grievance under the terms of the collective-bargaining agreement over the failure of the Postal Service to grant her request for annual leave. (GC Exh. 30.) Subsequently, Lorenzo Scruggs returned the grievance, with his response, in the form of a "Post-It" note, attached to the grievance. (GC Exh. 31.) Scruggs and O'Toole then had a discussion about why her original request for leave had not been granted. While there was no significant variance between the testimony of Scruggs and O'Toole, his version was more complete and explained each of the items noted in the "Post It."

Scruggs testified that he explained to O'Toole that as "she didn't have a sub of record," he "couldn't guarantee the leave." He told her that was "the way the system [was] set up," and that he couldn't "play favorites." In any event, as she had now filed for FMLA leave, the matter was out of his hands, and he no longer had the authority to process her original request for an-

[11] It should be noted that the substitute carrier who was ultimately assigned to cover O'Toole's route in her absence was fired by the Postal Service, because of an inability to properly service the route.

[12] Substitute carrier Cynthia Bickman did speak with Martin on behalf of O'Toole, suggesting that O'Toole's route be "split" between a number of carriers. However, Martin rejected the idea, saying that the station was "too short-handed" for that idea to work.

[13] In her original request for annual leave, O'Toole had indicated in the remarks section of the form that she needed the time off for her "Aunt's 90th birthday reunion [and] must help [her] 87 year old dad (Please)." (Emp. Exh. 5.)

nual leave. However, Scruggs continued to explain why certain carriers had leave approved ahead of O'Toole, either because they had subs of record or because they were close to working the maximum number of hours permitted.[14] He reminded O'Toole that not only did her route not have a substitute carrier assigned to it, but that no substitute had chosen her route as either a secondary or tertiary route. Scruggs brought the conversation to an end by insisting that he had continued to work on finding coverage for the route, at least for the last 2 weeks of the requested leave, which O'Toole had earlier told him that she would be satisfied to receive. Now, with her request for FMLA leave, the earlier leave request for annual leave was no longer within his authority to grant.

O'Toole contends in her version of the conversation that while discussing the contract provisions regarding annual leave, Scruggs indicated, "If I go by the book, it's going to be hard on everyone." As noted above, Scruggs contends that he referenced the "system" and indicated he couldn't "play favorites." To the extent that this variance exists, I credit Scruggs' version of the conversation as more credible. His version reasonably fits into the context of the conversation, while O'Toole's version seems more contrived.

As previously mentioned, a substitute carrier, who had a primary but no secondary or tertiary route, was assigned to train on O'Toole's route in her absence. It was apparently in that manner that the route was covered. O'Toole took 19 days of leave under the FMLA. Although not totally clear from the record, I assume that O'Toole's grievance is still pending.

The witnesses are unanimous that the issue of the filing of an unfair labor practice charge by O'Toole over her removal as an academy trainer was never brought up in connection with the issue of her leave request. Scruggs, Martin, O'Toole, and Spearman all testified that there was no discussion of the requirement that academy trainers be union members in connection with O'Toole's difficulty in getting her request for annual leave granted. O'Toole testified that she was never verbally threatened with the denial of leave because she filed a charge with the Board. Further, she testified that neither Scruggs nor Martin ever said anything to her that indicated either supervisor was unhappy with her for filing the original charge with the Board. Scruggs testified that as he helped O'Toole prepare the original charge against the Postal Service, the actual filing of that charge certainly did not upset him. Martin testified that although she had the ultimate responsibility to grant or deny leave requests, she had decided not to reconsider Scruggs' action in denying O'Toole's request for annual leave, pending scheduling. According to Martin, she was at the time aware that O'Toole had filed a charge with the Board, but "never gave it a thought" in connection with O'Toole's request for leave.

In a final effort to connect the Postal Service's failure to grant O'Toole's annual leave request with her filing of a charge with the Board, counsel for the General Counsel called Kenneth Green[15] to testify. At the time he testified, Green was a rural letter carrier assigned to a postal station in Parker, Arizona, but who until very recently had been employed at the Kachina station. It was very obvious from his testimony that Green harbored considerable animosity toward the management of the Kachina station. He acknowledged that he had requested a transfer from the Kachina station in part because of his perception that management did not apply the rules fairly, treating certain employees in a preferential way. In any event, he testified that 2 or 3 months earlier, he had a conversation with Scruggs, during which Scruggs mention O'Toole, and indicated that she "was causing him trouble again," or "words to that effect." Green could not recall the context of that comment. However, he was certain that he had never discussed with Scruggs the fact that O'Toole had filed a charge with the Board. Further, he was able to place the comment by Scruggs at about the same time that "a day off . . . had been asked for" by O'Toole.

In my opinion, Green was not so much an incredible witness as he was a rather weak witness, who was obviously biased against the Employer's management at the Kachina station. Green's vague testimony does not help connect the filing of O'Toole's charge, with management's denial of her leave request. At most, Green supports an argument that could be made that O'Toole's efforts to have her request for annual leave approved were causing problems for Scruggs. Such a conclusion could reasonably be reached, assuming Green's recollection of Scruggs' comment was accurate. However, it would not in my view reasonably support counsel for the General Counsel's argument that the comment refers to O'Toole's filing of a charge with the Board.

C. Analysis and Conclusions

1. The Academy Instructor issue

The General Counsel's theory in this case is simple and straightforward. It is alleged that the position of rural carrier academy instructor is a term or condition of employment. Further, the General Counsel contends that by requiring as a prerequisite that a candidate for that position be a member of the Union, the Employer is interfering with, restraining, and coercing employees in the exercise of their Section 7 rights, while, concomitantly, the Union is also restraining or coercing those employees. The Union's action is also alleged as an attempt to cause the Employer to discriminate against its employees by encouraging membership in the Union. On the other hand, the Respondent Union argues that the instructor position is a voluntary, ad-hoc position, which does not constitute a term or condition of employment. According to counsel for the Union, it, therefore, follows that requiring union membership, as a prerequisite for applying for the position, cannot constitute a violation of the Act.

The threshold issue remains the nature of the instructor position. In this regard, I agree with the General Counsel and conclude that the position is a term or condition of employment. The position of rural academy instructor is sought after, at least by some employees. It is competitive, and requires an application process including an oral interview. The postings for the position in the Phoenix metropolitan area indicated that applicants "must submit" a "PS Form 991, Application for Promotion or Assignment." (GC Exh. 4; Jt. Exh. 8.) This is appar-

[14] This is what is customarily referred to as a "2080 problem."

[15] In her posthearing brief, counsel for the General Counsel mistakenly refers to Green as Ken Brown.

ently the same form used by applicants applying for any work related promotion within the Postal Service.[16]

It is undisputed that the instructor position pays only the amount the instructor earns for the performance of his/her rural letter carrier duties. There is no extra pay. However, I am convinced that those who apply for the position view it as a "perk." When questioned at the hearing by the undersigned, the witnesses were uniform in suggesting that employees apply for the position because they derive self-satisfaction in being able to teach new employees the proper way to perform the job of rural letter carrier. Further, former and current instructors indicated that the position is "fun," allows them to meet "interesting people," and, of course, is an alternative to delivering the mail. Even more significant, all of those witnesses who commented on the subject at the hearing acknowledged that having performed the position of academy instructor would contribute to a resume offered by a candidate for a managerial position within the Postal Service.

Realistically, the position of academy instructor is as much a benefit to the selected employee as is providing air conditioning or access to vending machines for employees. In my view, it is clearly a term or condition of employment for which the employee derives a benefit. As such, the Respondents' contractual clauses, which give preferential treatment to union members in applying for the position, are discriminatory on their face. See *Radio Officers' Union v. NLRB*, 347 U.S. 17, 40, 47–48 (1954) (unlawful for employer to grant retroactive wage and vacation benefits based upon employee's union membership); *Vanguard Tours*, 300 NLRB 250, 253 fn. 15, 267 (1990), enfd. 981 F. 2d 62, 67 (2d Cir. 1992) (unlawful for labor contract to provide for pension benefits only for union members); *Dairylea Cooperative Inc.*, 219 NLRB 656 (1975).

However, not every benefit awarded to employees based on union membership is unlawful, and may in fact be valid if it is necessary to the effective performance of the union's collective-bargaining function. It is the burden of the Respondents to justify what I have concluded is the facially discriminatory rule found within the "National Guidelines" and associated documents. See *Electrical Workers Local 48 (Oregon-Columbia NECA)*, 342 NLRB No. 10 (2004). Counsel for the Union spends the majority of his posthearing brief arguing this very point.

It is the position of the Respondent Union that academy instructors are "agents" of the Union who facilitate the administration of the collective-bargaining agreement. At the hearing, Randy Anderson, union director of labor relations, and Scottie Hicks, former national president of the Union, testified at great length about the alleged "integral" part that academy instructors play in the collective-bargaining process.

Much is made of the compensation system for rural letter carriers, which, according to the Union, is highly complex. I would certainly agree that the salary system for rural letter carriers is somewhat unique. Salaries vary widely based on an annual mail count to determine the estimated amount of time it takes for a carrier to deliver her route each week. Assigned time and money values are given to 32 standards affecting rural routes, such as the number of boxes, miles traveled, and types and classes of mail delivered and collected. Once a route is evaluated at a set number of hours, the carrier is paid the evaluation rate for the route, even if it takes her more or less hours to deliver the mail on a given day.

Another rather unusual aspect of the parties collective-bargaining agreement is the requirement that the Employer provide each regular rural letter carrier with a designated substitute carrier, so that the regular carrier can be awarded leave on demand. However, as was noted above, this contractual requirement is not always achieved since the Postal Service has had significant difficulty with the hiring and retention of substitute carriers.

The Union contents that because of these unique aspects of its contract with the Postal Service, it is necessary for the academy instructor to function as an agent of the Union. Allegedly, only in this way can the complexity of the contract be properly brought to the attention of the newly hired substitutes in the academy classes, and, in return, can "feedback" from the trainees be properly brought to the attention of the Union.

The Union's argument is premised on the QWLEI process, which is a product of collective bargaining. According to the Union, the QWLEI process created the concept of the rural academies, and also the requirement that those academy instructors be members of the Union. As testified to by the union witnesses, the parties realized the importance of improving the recruitment and retention of substitute carriers, and created the academies as a means of doing so. Allegedly, it was felt that union members, as agents of the Union, would be most likely to achieve this goal by fully imparting the complexities of the contract on the trainees, and by returning useful information to the Union. This information could then be used by the parties, through the collective-bargaining process, to make necessary changes and further improve the recruitment and retention rate for substitute carriers.

In my opinion, this argument by the Union is highly attenuated and simply "does not hold water." At best, it is merely theoretical. It does not demonstrate a legitimate, real basis upon which requiring academy trainers to be union members assists the Union in the performance of its collective-bargaining function. In his posthearing brief, counsel for the Union cites a number of Board cases that stand for the proposition that a union has the right to designate its choice as union steward, collective-bargaining representative, or union policy maker, without interference by the employer.[17] However, these cases are all factually distinguishable from the matter at hand.

The academy instructors do not engage in collective bargaining. They do not make suggestions about working conditions

[16] While the PS Form 991 has clearly been used in the Phoenix metropolitan area, there exists certain internal "Management Instructions" that indicate the DJSC "should" use an application process "other than the formal Form 991 procedures" when advertising for the instructor position. (Jt. Exh. 7, p. 4; Jt. Exh. 2, p. 15.)

[17] In his brief, counsel for the Union cites several Advice Memoranda from the NLRB General Counsel's Division of Advice. Such memoranda are intended to serve as internal instruction for use by the Office of the General Counsel, and have no precedential value or authoritative weight for administrative law judges.

that may end up in the parties' contract any more or less than do any other employees. To the extent that instructors may convey to union officials the sentiments of trainees, this can still be done by the instructors, whether they are union members or not. Although Randy Anderson testified that this "filter[ing] up" of information by instructors does occur, he was unable to offer even a single specific example. Again, the advantage to the Union's collective-bargaining role appears only theoretical. In any event, if the Union believes it is important for it to retain this capability, there certainly would be no impediment to the Union encouraging its members to apply for the position of academy instructor.

The academy instructors do not assist in administering the contract. They are not stewards or grievance persons. Employees, including trainees at the academy, do not normally seek out their assistance to resolve a problem at work. They are not consulted about possible violations of the contract any more than any other employees. Further, they are certainly not authorized by the Union to seek to resolve grievances with management, nor do they speak on behalf of the Union, or establish policy on behalf of the Union.

As a sort of alternate theory, the Respondent Union argues that the position of academy instructor, as a distinct entity, is a part of the collective-bargaining agreement, and, thus, requires an agent of the Union, in the form of a union member, to teach the course. In her posthearing brief, counsel for the General Counsel characterizes the Union's approach as the "part and parcel theory." In my view, this is an accurate description of the Respondent Union's argument that as the material taught in the academy comes from the Rural Carrier Duties and Responsibilities Handbook (Jt. Exh. 3, Handbook PO-603.), which in turn is an extension of the collective-bargaining agreement (Jt. Exh. 5.), that the instructor is administering the contract.

This is a rather specious argument. There is one employer here, namely the Postal Service. Of course, any labor related publication by the Employer has some interrelationship with other labor related publications. The Postal Service publishes the Standard Training Program for Rural Letter Carriers, Instructor's Guide (U. Exh. 4.) for use by the academy instructors, which in turn is based on the Rural Carrier Duties and Responsibilities Handbook. (Jt. Exh. 3.) Ultimately both documents draw their authority from the parties collective-bargaining agreement. However, I fail to see how any of this confers upon the academy instructors some role in the collective-bargaining process. All the bargaining unit jobs are creatures of the contract, but that does not make every employee an administrator of the contract, or part of the collective-bargaining process. In my view, the Respondent Union is really "grasping at straws" with this argument.

A number of the union witnesses testified that the academy instructor functions as the "eyes and ears" of the Union, and, therefore, must be a union member. Allegedly, the academy instructors hear from the trainees about issues or problems that the Union should consider in preparing collective-bargaining proposals. It is suggested that only union members would feel comfortable or be in a position to pass such information on to union officials. There were no specific examples given of such issues brought to instructors' attention by trainees. However, even assuming trainees did raise such issues, surely regular rural letter carriers voice concerns every day over the terms and conditions of their employment. Such concerns are undoubtedly raised by nonmembers as well as members and are received by union officials in all sorts of ways. It is simply disingenuous to suggest that academy instructors need to be union members in order for trainee complaints to reach union officials.

It was clear from the testimony of the union witnesses that they uniformly held the belief that union members were more qualified to serve as academy trainers than were nonmembers. While not expressed as a "last ditch," final theory, I view this argument in such a fashion. Being qualified to serve in the position certainly does not mean that the instructor is either an agent of the Union or part of the collective-bargaining process. In any event, counsel for the Respondent Union argues in his posthearing brief that the union members possess detailed knowledge in the complexities of the collective-bargaining agreement, specifically in the compensation system and use of substitute carriers, necessary to properly instruct the trainees.

A number of union witnesses testified that union members have available to them resources not available to nonmembers. Examples given were the national monthly magazine, *The Nation Rural Letter Carrier*, the union web site, and local, state, and national conventions. According to these witnesses, changes to the contract and related documents made by the parties through the collective-bargaining process may not appear in a Postal Service publication for some time after agreement. However, such changes will be reported almost immediately on the union web site, and usually within the month in the national magazine. Discussions of these changes will also occur during the year at regular union conventions. None of these vehicles of information would normally be available to nonmembers, who would be ignorant of the changes until formally notified in a Postal Service publication.

Additionally, certain of the union witnesses testified that union members tend to be the best-informed employees. Allegedly, they are more knowledgeable than nonmembers concerning the various documents that the academy instructor needs to be familiar with including the collective-bargaining agreement (Jt. Exh. 5), the Standard Training Program for Rural Letter Carriers, Instructor's Guide (U. Exh. 4), and the Rural Carrier Duties and Responsibilities Handbook (Jt. Exh. 3, Handbook PO-603). It is argued that such knowledge of these documents, including recent changes made through the collective-bargaining process, makes union members better able to instruct trainees in their duties and responsibilities than nonmembers.

However, these assumptions are not necessary valid. There is no demonstrable evidence that union members are any more knowledgeable in the details of the contract and related documents than nonmembers. Certainly knowledge in such matters varies from individual to individual. Sylvia Knisley, formally human resources specialist for the Postal Service, testified that Kathy O'Toole was one of the best academy instructors she had, and was given awards for her superior participation as a trainer. As discussed earlier, O'Toole was for some of the period of time she served as a trainer no longer a union member.

Further, a number of the union witnesses candidly testified that there are certainly union members who, despite the best efforts of the Union, do not keep informed. Having available the national magazine, union web site, and union conventions does mean that every member is availing him or herself of those resources.

In my opinion, there is simply no direct correlation between union membership and knowledge of the contract and related documents. It is the Postal Service's responsibility to ensure that information regarding changes to the contract are made available to all rural carriers, regardless of their union membership status. Further, O'Toole credible testified, largely without contradiction, that there were no discussions about the Union, the processing of grievances, or the collective-bargaining process during the academies at which she instructed. Kinsley supported O'Toole's testimony, and indicated that instructors were specifically told not to discuss the Union during academy time. Therefore, when considering the skills and knowledge necessary to perform the position of academy instructor, there is no logical reason why union membership must be a prerequisite for selection to the position.

I have reached the conclusion that requiring union membership as a prerequisite for the position of academy instructor constitutes unlawful favoritism based on union membership. The membership requirement is not necessary for the performance of the Union's collective-bargaining or representational function. It serves no lawful, legitimate purpose. By maintaining that requirement, employees who might otherwise prefer to remain nonunion and who were interested in applying for the instructor position would certainly feel unwarranted pressure to join the Union. The clause is question is, therefore, unlawful both on its face and as applied to applicants for the position.

Accordingly, the clause as contained in successive "National Guidelines" between the Respondents entitled "Quality of Work Life/Employee Involvement Process," and all related documents, which clause requires membership in the Union as a prerequisite for the position of rural letter carrier academy instructor is unlawful. Therefore, I conclude that by maintaining that clause the Respondent Union has been restraining and coercing employees in the exercise of their Section 7 rights in violation of Section 8(b)(1)(A) of the Act, as alleged in paragraphs 6(a) and 11 of the complaint. Further, in maintaining that clause, the Respondent Union has violated Section 8(b)(2) of the Act by attempting to cause and causing the Employer to discriminate against its employees by encouraging membership in the Union in violation of Section 8(a)(3) of the Act, as alleged in paragraphs 6(a) and 12 of the complaint. Also, I conclude that by maintaining the clause in question, the Respondent Employer has been interfering with, restraining, and coercing its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act, as alleged in paragraphs 6(a) and 8 of the complaint.

Of course, as discussed above, because union membership was a prerequisite for the position of academy instructor, the Employer on September 11, 2003, removed O'Toole from her instructor position, and on October 2, 2003, denied Houlter's application for an instructor position. I conclude that by this conduct, the Respondent Employer has been discriminating in regard to the terms or conditions of employment of its employees, thereby encouraging membership in the Union in violation of Section 8(a)(1) and (3) of the Act, as alleged in paragraphs 7(e), (f), (h), and 9 of the complaint. Further, I conclude that by this same conduct the Respondent Union has violated Section 8(b)(2) of the Act, as it attempted to cause and did cause the Employer to discriminate against its employees because of their nonmembership in the Union, as alleged in complaint paragraphs 6(a), 7(e), (f), and (h), and 12.

In connection with the removal of O'Toole from her instructor position and the denial of Houlter's application for an instructor position, the Employer's supervisors and agents engaged in a course of conduct alleged in the complaint as constituting violations of the Act. Based on the witness testimony, there is no dispute that these actions occurred. However, the Employer denies that they constituted violations of the Act, as they were incidental to the requirement that instructors be union members, which the Respondents argue is not unlawful.

Complaint paragraph 6(b) alleges that on about September 4, 2003, the Respondent Employer, by Henry Garcia, interrogated its employees about their union membership. Both Garcia and O'Toole testified that on about that date Garcia called O'Toole and inquired whether O'Toole remained a member of the Union, or words to that effect. At the time she was still classified as an academy instructor, but had earlier resigned from the Union. While there was a slight variance in their testimony, it is clear that the information Garcia was seeking was O'Toole's union membership status.

The Board looks to the "totality of the circumstances" in determining whether a supervisor's questions to an employee about her union activity were coercive under the Act. *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Medcare Associates, Inc.*, 330 NLRB 935 (2000), the Board listed a number of factors considered in determining whether alleged interrogations under *Rossmore House* were coercive. These are referred to as "*Bourne* factors," so named because they were first set forth in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964). These factors include the background of the parties relationship, the nature of the information sought, the identity of the questioner, the place and method of interrogation, and the truthfulness of the reply.

Based on the totality of the circumstances, I believe that Garcia's questioning of O'Toole about her union membership status constituted unlawful interrogation. These were questions by an acknowledged supervisor designed to determine whether O'Toole had exercised a basic right protected by Section 7, namely a decision whether she wished to belong to the Union or not. Although O'Toole apparently was not aware of the consequences of her answer at the time, the result of her candid admission that she was no longer a union member was her removal from the position of academy instructor. As has been demonstrated by this proceeding, the academy instructor was a position of great importance to O'Toole. Certainly, Garcia's conduct interfered with, restrained and coerced O'Toole in the exercise of her decision of whether to continue in her choice of nonmembership, or whether to rejoin the Union in order to retain her instructor position. Accordingly, I conclude that the Respondent Employer, by Henry Garcia, unlawfully interro-

gated Kathy O'Toole in violation of Section 8(a)(1) of the Act, as alleged in paragraphs 6(b) and 8 of the complaint.

Complaint paragraph 6(c) alleges that on about September 4, 2003, the Respondent Employer, by Garcia, threatened its employees with removal from the position of academy instructor, because they had resigned their membership in the Union. This allegation is merely an extension of the conversation mentioned above between Garcia and O'Toole. Again, there is very little variance between the versions of the conversation as told by the two witnesses. Both Garcia and O'Toole testified that after hearing that O'Toole was no longer a union member, Garcia informed her that in order to retain the instructor position, she must rejoin the Union. O'Toole informed Garcia that she would decided whether or not to rejoin, and would so inform him.

I conclude that Garcia's statement regarding the requirement that instructors be union members, and the demand that O'Toole rejoin the Union in order to retain her instructor position constituted an unlawful threat, which certainly affected her Section 7 right to refrain from engaging in union activity. Accordingly, I find that the Respondent Employer, by Henry Garcia, threatened O'Toole in violation of Section 8(a)(1) of the Act, as alleged in paragraphs 6(c) and 8 of the complaint.

It is alleged in paragraph 6(d) of the complaint that on about September 11, 2003, the Respondent Employer, by Sylvia Knisley, informed its employees that they could reapply for a position as an academy instructor if they rejoined the Union. This allegation relates to a conversation between Knisley and O'Toole, when Knisley, after learning that O'Toole was no longer a member of the Union, told O'Toole that she hated to lose O'Toole as an instructor, but that if O'Toole wanted to be an instructor in the future, O'Toole would need to rejoin the Union. Both witnesses appeared to agree on the substance of this conversation.

Once again, a supervisor of the Employer has interfered with, restrained, and coerced O'Toole in the exercise of her Section 7 right to resign from the Union. If there had been any doubt in O'Toole's mind regarding the issue, Knisley, the Employer's human resources specialist, certainly made it clear that nonmembership in the Union was incompatible with serving as an academy instructor. Accordingly, I conclude that the Respondent Employer, by Sylvia Knisley, interfered with O'Toole's right to refrain from union activity in violation of Section 8(a)(1) of the Act, as alleged in paragraphs 6(d) and 8 of the complaint.

Paragraph 6(e) of the complaint alleges that on about October 23, 2003, the Respondent Employer, by letter from Ken Ohman, informed its employees that they must be members of the Union in order to be selected for, or to retain, the position of academy instructor. Ohman is the Employer's manager of operations programs support. For a time, he served on the DJSC under the QWLEI process. As I noted earlier, it was in this capacity that Ohman responded to a letter received from O'Toole in which she advised the DJSC of her belief that the requirement that academy instructors be union members was a violation of the law. In his reply letter dated October 17, 2003, Ohman pointed out that the National Guidelines for the QWLEI process required that rural academy instructors must be members of the Union. Further, he indicated in his letter that it was the position of the DJSC that such a requirement was lawful. (GC Exh. 13.)

By his letter, Ohman was once again informing O'Toole of what she was now well aware, namely that union membership was a prerequisite for selection to the position of academy instructor. As I have already held a number of times, I find that such a statement by a supervisor and agent of the Employer served to interfere with, restrain, and coerce O'Toole in the exercise of her Section 7 right to refrain from belonging to the Union. Accordingly, I conclude that by Ohman's letter, the Respondent Employer violated Section 8(a)(1) of the Act, as alleged in paragraphs 6(e) and 8 of the complaint.

2. The denial of annual leave issue

The General Counsel alleges that the Respondent Employer's failure to grant O'Toole's request for annual leave constituted unlawful retaliation under the Act. Section 8(a)(4) of the Act prohibits an employer from discharging or otherwise discriminating against an employee for filing charges or giving testimony under the Act. *Seven Seventeen HB Denver Corp*., 325 NLRB 534, 543 (1998). Obviously, in the case at hand, O'Toole first filed an unfair labor practice charge against the Employer on November 24, 2003, alleging that the Respondent Employer had discriminated against her because of her nonmembership in the Union.[18] To establish a violation, the General Counsel must produce evidence, either directly or by inference, that the Employer took some adverse action against O'Toole, which action was motivated by the filing of her charges or by her participation in Board proceedings. *Wayne W. Sell Corp.* 281 NLRB 529, 534 (1986). Violations of Section 8(a)(4) of the Act are analyzed using the *Wright Line* test. See *McKesson Drug Co*., 337 NLRB 935, 936 (2002).

In *Wright Line* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 98 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. This showing must be by a preponderance of the evidence. Then, upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The Board's *Wright Line* test was approved by the United States Supreme Court in *NLRB v. Transportation Corp*., 462 U.S. 393 (1983).

In the matter before me, I conclude that the General Counsel has not made a prima facie showing that O'Toole's protected activity, namely her filling of an unfair labor practice charge with the Board against the Employer, was a motivating factor in the Employer's decision to disapprove her request for annual leave. The Board in *Tracker Marine, L.L.C*., 337 NLRB 644 (2002), affirmed the administrative law judge who evaluated the question of the employer's motivation under the framework established in *Wright Line*. Under that framework, the General

[18] GC Exh. 1(a).

Counsel must establish four elements by a preponderance of the evidence. First, the General Counsel must show the existence of activity protected by the Act. Second, the General Counsel must prove the respondent was aware that the employee had engaged in such activity. Third, the General Counsel must show that the alleged discriminatee suffered an adverse employment action. Fourth, the General Counsel must establish a link, or nexus, between the employee's protected activity and the adverse employment action. In effect, proving these four elements creates a presumption that the adverse employment action violated the Act. To rebut such a presumption, the respondent bears the burden of showing that the same action would have taken place, even in the absence of the protected conduct. See *Mano Electric, Inc*., 321 NLRB 278, 280 fn. 12 (1996); *Farmer Bros. Co*., 303 NLRB 638, 649 (1991).

It is axiomatic that filing a charge with the Board constitutes protected activity. *Larry Blake's Restaurant*, 230 NLRB 27, 39 (1977); *Portsmouth Ambulance Service*, 323 NLRB 311, 325 (1997). Further, there is no doubt that the Employer's supervisors were well aware that O'Toole had filed an unfair labor practice charge against the Postal Service. As was noted above, Lorenzo Scruggs had encouraged and assisted O'Toole in the filing of that charge with the Board. He had informed Georgia Martin of what had transpired. Also, Ken Ohman knew, as of the date of his receipt of O'Toole's letter of September 22, 2003, that she was upset with her removal as an academy instructor. (GC Exh. 12.) Ohman responded by letter dated October 17, 2003. (GC Exh. 13.) According to O' Toole, about July 27, 2004, she was told by Martin that Ohman had been asking what kind of carrier she was and about her work performance.

The ability to take annual leave is certainly a term or condition of employment. O'Toole requested annual leave, and that request was disapproved, pending scheduling. (Emp. Exh. 5.) This was, for all practical purposes, at least a temporary denial of her vacation request. As such, it constituted an adverse employment action.

Based on the above, it would seem that the General Counsel has established three of the elements necessary to establish a prima facie case under *Tracker Marine, supra*. However, I am of the view that the General Counsel has failed to establish the necessary fourth element, that of animus by the Employer toward O' Toole because she engaged in protected activity. It is here that the General Counsel's theory becomes unsupportable.

There is no probative evidence that the Employer harbored any animosity toward O'Toole because she filed the charge objecting to the requirement that academy instructors be union members. Instrumental in the filing of that charge was her immediate supervisor, Lorenzo Scruggs. He suggested she file the charge, contacted the Board in her behalf, helped her with the forms she received from the Agency, and drafted the letter of protest that O'Toole sent to Ohman. She repeatedly consulted Scruggs about the charge. He offered to appear as a witness in support of her claim, and went so far as to inquire of his postmaster whether he could serve as her representative before the Board. As O'Toole's immediate supervisor, Scruggs was the person who denied her request for annual leave. It is totally illogical to conclude that Scruggs' action was in retaliation for the filing of the very unfair labor practice charge, which he had so strongly encouraged O'Toole to file. As far as I am concerned, counsel for the General Counsel has never satisfactorily explained this alleged glaring contradiction in Scruggs' behavior.

In complaint paragraphs 6(f) and (g) it is alleged that Scruggs made certain threats against employees because of their protected concerted activity. Counsel for the General Counsel argues in her posthearing brief that by this alleged conduct Scruggs "revealed his darker side once [O'Toole's] Board charge began troubling him." It is, therefore, appropriate at this time to consider those allegations.[19]

Specifically, complaint paragraph 6(f) alleges that on about July 28, 2004, the Respondent, by Scruggs, threatened its employees with denial of annual leave requested, because they filed a charge against the Employer and gave testimony to the Board. It appears from counsel's posthearing brief, that the only evidence in support of this allegation is O'Toole's testimony. She testified that about July 27, while she was "busy working," Scruggs came over to her and said, "There might be a problem with your vacation." She did not respond, and Scruggs walked away. Assuming this testimony to be credible, I fail to see how Scruggs' statement constituted a threat of any kind, let alone a threat of retribution for filing an unfair labor practice charge. There was a real problem with her request for annual leave, as O'Toole had no designated substitute carrier and all such requests were denied, pending scheduling. In other words, until arrangements could be made for a substitute carrier to cover the route, O'Toole's request would be denied.

Scruggs, Martin, and even union steward Spearman all testified as to the difficulty the Postal Service had at the Kachina station in hiring and retaining enough substitute carriers to honor the contractual requirement that regular carriers be permitted to take leave as requested. According to Scruggs, Martin, and Spearman, requests for leave from regular carriers without designated substitutes were usually initially denied. Spearman candidly testified that "everybody" with this "problem" is "in the same boat." They have their leave request denied, and "don't find out if it's approved until days before [it is scheduled to begin]." The leave request forms from numerous other regular carriers for this same general period of time supports this position. (Emp. Exh. 2 & 3.) As these other carriers, whose leave requests were denied pending scheduling, had apparently not filed charges with the Board, the General Counsel is hard pressed to demonstrate disparate treatment toward O'Toole. Accordingly, I shall recommend that complaint paragraph 6(f) be dismissed.

Regarding complaint paragraph 6(g), it is alleged that on about August 14, 2004, the Employer, by Scruggs, threatened its employees with the denial of unspecified benefits because they engaged in concerted activities. In her posthearing brief, counsel for the General Counsel indicates that this allegation is based on a statement directed to O'Toole by Scruggs. Follow-

[19] In her posthearing brief, counsel refers to complaint paragraphs 12(a) and (b) as alleging "Scruggs' Threats." There are no such numbered paragraphs, and I believe that the reference was inadvertent and counsel meant paragraphs 6(f) and (g).

ing O'Toole's filing of a grievance over the denial of her request for annual leave, she complained about not being treated fairly and in conformity with the collective-bargaining agreement. Scruggs is alleged to have responded, "If I go by the book, it's going to be hard on everyone."

Scruggs credibly testified to a somewhat different statement than that alleged by O'Toole. However, even assuming Scruggs made the statement attributed to him by O'Toole, I do not believe it was reasonable for her to have construed the statement as a threat to deny her, or others, benefits because she engaged in protected activity. When placed in the context of the conversation between O'Toole and Scruggs where he was trying to explain to her why he had denied her leave request pending scheduling, the statement does not appear threatening. Scruggs had responded to the grievance with the information contained on the "Post It" note. (GC Exh. 31.) In the discussion that ensued, Scruggs explained to O'Toole what he had written. In part, he explained that the reference to 2080 personnel was to those carriers whose hours for the year were in danger of exceeding the acceptable limit under the contract. Such carriers are given priority for leave requests among those without designated substitutes. When O'Toole questioned Scruggs about the precise language in the contract, his response was apparently intended to mean that flexibility was needed in interpreting the agreement. While his words may have been somewhat inarticulate, there was no connection, which might reasonably be inferred, with any concerted activity in which O'Toole had engaged. Accordingly, I shall recommend that complaint paragraph 6(g) be dismissed.

In the various conversations between O'Toole and Scruggs and O'Toole and Martin during which the issue of her leave request was discussed, there was never any reference to O'Toole having filed charges with the Board. O'Toole admitted in her testimony that neither Martin nor Scruggs ever said anything to her that would indicate they were unhappy with her for filling charges with the Board. Further, she candidly admitted when being cross-examined by counsel for the Postal Service that she had "not been verbally threatened" with the denial of leave because she filed charges with the Board. Further, union steward Spearman testified that when trying to resolve O'Toole's complaint about her leave request with Scruggs and Martin, the issue of O'Toole's charge with the Board was never discussed.

Both Martin and Scruggs credibly denied that there was any connection between the denial of O'Toole's request for leave and her filing of unfair labor practice charges over her removal as an academy instructor. According to Martin, at the time the leave request was disapproved pending scheduling, she "never gave it [the charges] a thought."

Scruggs' testimony was particularly credible. It appeared genuine and sincere, and was certainly supported by "common sense." When asked by counsel for the Postal Service whether he was upset with O'Toole for filing charges with the Board over her removal as an instructor, he replied, "Why would I be upset at something that I believed in? Well, no I'm not upset. I helped her do it." Of course, the answer was both direct and accurate. He had been instrumental in encouraging O'Toole to file charges with the Board. She consulted with him about the charges as many as a dozen times, and not only was Scruggs prepared to testify in her behalf, but he had even sought permission to represent her. His testimony that there was no connection between the filing of charges with the Board by O'Toole and his processing of her leave request certainly had "the ring of authenticity" to it.

The only evidence in support of the contention that the denial of O'Toole's request for annual leave was related to her Board charges was the solely speculative testimony of O'Toole herself. Suspicion alone cannot sustain the General Counsel's burden of proof. *Western Lace & Line Co.*, 105 NLRB 749, 751, fn. 3 (1953) (suspicion alone cannot sustain an 8(a)(4) charge). While Martin mentioned to O'Toole that Ohman was asking about her job performance around July 27, 2004, I do not find this particularly unusual, as the Postal Service was certainly concerned at the time with defending against those charges that O'Toole had filed with the Board. There is absolutely no evidence that Ohman was in any way involved with the decision to deny O'Toole's request for annual leave. Nor is there any evidence that Martin's decision not to overrule Scruggs was related to O'Toole's filing of Board charges. Martin and Scruggs merely followed the normal procedures in disapproving a leave request for a carrier without a designated substitute, pending scheduling.

The probative evidence does not support the suggestion that O'Toole was treated in a disparate fashion. To the contrary, the testimony of knowledgeable, credible witnesses, Scruggs, Martin, and Spearman, as well as the documentary evidence, supports the Employer's defense that at the time in question not only O'Toole but also other similarly situated carriers without designated substitutes were denied leave, pending scheduling. (Emp. Exh. 2 & 3.) Such evidence certainly does not sustain the General Counsel's theory of the case. See *Dayton Tire & Rubber Co.*, 216 NLRB 1003 (1975) (employer's defense is aided by evidence that employees inside and outside of protected categories were treated the same).

A final reference should be made to the testimony of Kenneth Green. Green, a former carrier at the Kachina station, testified about a conversation he allegedly had with Scruggs 2 or 3 months earlier, where Scruggs mentioned that O'Toole "was causing him trouble again." Green acknowledged that the Board charge was never mentioned, and he believed the reference was in connection with O'Toole asking "about a day off." In fact, I found Green's testimony to be worthless. He was clearly biased against management at the Kachina station, having testified that he requested a transfer from that station because he disliked certain management policies. Further, he could not even recall with any certainty the context during which the reference to O'Toole causing trouble was allegedly made. In any event, even assuming the comment was made by Scruggs to Green, it would indicate only that Scruggs was frustrated with O'Toole's response to the disapproval of her request for leave, and not any alleged animus toward O'Toole because she filed charges with the Board.

Based on the above, I am of the opinion that the General Counsel has failed to establish the necessary element of animus by the Respondent Employer. Therefore, the General Counsel has also failed to make a prima facie case, and meet his burden

of proof for a violation of Section 8(a)(4) of the Act. *Tracker Marine, supra*. Accordingly, I shall recommend that complaint paragraphs 7(g), (i), and 10 be dismissed.

3. Summary

As is reflected above, I find that the Respondent Employer has violated Section 8(a)(1) of the Act as alleged in paragraphs 6(a), (b), (c), (d), (e), and (8) of the complaint; and Section 8(a)(3) and (1) of the Act as alleged in paragraphs 7(e), (f), (h), and (9) of the complaint. Further, I find that the Respondent Union has violated Section 8(b)(1)(A) of the Act as alleged in paragraphs 6(a) and (11) of the complaint; and Section 8(b)(2) of the Act as alleged in paragraphs 6(a), 7(e), (f), (h), and (12) of the complaint.

CONCLUSIONS OF LAW

1. The Respondent Employer, United States Postal Service, is an employer over which the Board has jurisdiction pursuant to Section 1209 of the Postal Reorganization Act.

2. The Respondent Union, National Rural Letter Carriers' Association (NRLCA), is a labor organization within the meaning of Section 2(5) of the Act.

3. By the following acts and conduct the Respondent Employer has violated Section 8(a)(1) of the Act.

(a) Maintaining in a document entitled, "National Guidelines for the Quality of Work Life/Employee Involvement Process" a clause requiring that an employee selected for the position of rural letter carrier academy instructor be a member of the Respondent Union.

(b) Interrogating its employees about their union membership.

(c) Threatening its employees with removal from the position of rural letter carrier academy instructor because they had resigned their membership in the Respondent Union.

(d) Informing its employees that they could reapply for a position as a rural letter carrier academy instructor if they rejoined the Respondent Union.

(e) Informing its employees that they must be members of the Respondent Union in order to be selected for, or to retain, the position of rural letter carrier academy instructor.

4. By the following acts and conduct the Respondent Employer has violated Section 8(a)(3) and (1) of the Act.

(a) Removing Kathy O'Toole from her position as a rural letter carrier academy instructor, because she had resigned her membership in the Respondent Union. and

(b) Denying Jeffrey Houlter's application for a position as a rural letter carrier academy instructor, because he was not a member of the Respondent Union.

5. By the following acts and conduct the Respondent Union has violated Section 8(b)(1)(A) of the Act.

(a) Maintaining in a document entitled, "National Guidelines for the Quality of Work Life/Employee Involvement Process" a clause requiring that an employee selected for the position of rural letter carrier academy instructor be a member of the Respondent Union.

6. By the following acts and conduct the Respondent Union has violated Section 8(b)(2) of the Act.

(a) Maintaining in a document entitled, "National Guidelines for the Quality of Work Life/Employee Involvement Process" a clause requiring that an employee selected for the position of rural letter carrier academy instructor be a member of the Respondent Union.

(b) Causing the Respondent Employer to remove Kathy O'Toole from her position as a rural letter carrier academy instructor, because she had resigned her membership in the Respondent Union.

(c) Causing the Respondent Employer to deny Jeffrey Houlter's application for a position as a rural letter carrier academy instructor, because he was not a member of the Respondent Union.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, including the posting of appropriate notices.

In her posthearing brief, counsel for the General Counsel argues that in order to remedy a violation of the Act caused by the unlawful clause in the "National Guidelines for the Quality of Work Life/Employee Involvement Process," which is a nationwide document, it will be necessary to require a nationwide posting of the Board's notices. Counsel for the Union argues in his posthearing brief that, assuming a violation of the Act is found, it is limited on its facts to the Phoenix metropolitan area, and, therefore, any notices need only be posted locally. I agree with counsel for the General Counsel. As the name implies, the "National Guidelines" are made available to employees in the recognized bargaining unit throughout the United States, and it certainly potentially affects all such employees. Under these circumstances, "employerwide" and "unionwide" national postings are appropriate in order to ensure that all the employees in the nationwide bargaining unit are made aware of their rights under the Act. See *Postal Service*, 303 NLRB 463, 463 fn. 5 (1991).

As a further remedy, I shall require the Respondent Employer and the Respondent Union to rescind and cease giving effect to the "National Guidelines for the Quality of Work Life/Employee Involvement Process," and any similar documents to which the Respondents are parties, anywhere such documents apply in the United States of America and its territories, insofar as such documents require that any employee selected for the position of rural letter carrier academy instructor be a member of the Respondent Union.

In order to remedy the discrimination against them by the Respondents, my recommended order further requires the Respondent Employer to reinstate Kathy O'Toole to her former position as a rural letter carrier academy instructor, and to award that same position to Jeffrey Houlter. Further, I shall order the Respondent Employer to reinstate or award the rural letter carrier academy instructor position to any bargaining unit member employed at the Kachina station and similarly discriminated against by the Respondents since May 24, 2003.[20]

[20] This date is 6 months prior to the filing of the original charge in this case.

However, I decline to order such a remedy "nationwide" for any unidentified employees allegedly detrimentally affected by the operation of the Respondents' union member only rule. Counsel for the General Counsel requested such a remedy in her posthearing brief, and had previously raised the matter at the hearing in connection with a subpoena issue. During the trial, counsel for the Union opposed expanding the complaint beyond those discriminatees named in the complaint. At the time, I ruled that the complaint clearly sought a "nationwide" remedy regarding the rescision of the union member only rule, but that the remedy sought for discriminatees was limited to the two individuals named in the complaint and those employed at the Kachina station.[21] That location was the only facility specifically named in the complaint, which appeared to be narrowly drafted only so far as concerned the remedy for individual discriminatees. I continue to take that position. Unlike the requested remedy for the union member only rule, which seeks recision "anywhere the Guidelines apply in the United States of America and its territories," the complaint does not seek an "employerwide" remedy for individual employees discriminated against by that rule. No evidence was taken regarding affected employees beyond O'Toole and Houlter. Accordingly, a more expansive remedy would not be appropriate.[22]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

A. The Respondent Employer, United States Postal Service, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing any agreement, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," that requires that an employee be a member of the National Rural Letter Carriers' Association (NRLCA) in order to serve as a rural letter carrier academy instructor.

(b) Interrogating its employees about their union membership.

(c) Threatening its employees with removal from the position of rural letter carrier academy instructor because they had resigned their membership in the NRLCA.

(d) Informing its employees that they could reapply for a position as a rural letter carrier academy instructor if they rejoined the NRLCA.

(e) Informing its employees that they must be members of the NRLCA in order to be selected for, or to retain, the position of rural letter carrier academy instructor.

(f) Removing its employees from the position of rural letter carrier academy instructor because they are not members of the NRLCA.

(g) Denying appointment of its employees to the position of rural letter carrier academy instructor because they are not members of the NRLCA.

(h) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Rescind the rule that rural letter carrier academy instructors must be members of the NRLCA, remove such rules from any and all employee publications or documents to which it is a party, including the "National Guidelines for the Quality of Work Life/ Employee Involvement Process," and advise its employees in writing that this rule is no longer being maintained or enforced.

(b) Within 14 days from the date of the Board's Order, remove from its files any reference to the removal of Kathy O'Toole from her position as a rural letter carrier academy instructor, and any reference to the failure to award the same position to Jeffery Houlter, because they were not members of the NRLCA, and any similarly situated employees employed at the Kachina station since May 24, 2003, and within 3 days thereafter notify O'Toole, Houlter, and any such other employees, in writing that this has been done.

(c) Within 14 days from the date of the Board's Order, offer to Kathy O'Toole, Jeffery Houlter, and any other employees who were removed from, or rejected from consideration for, the position of rural letter carrier academy instructor by reason of their nonmembership in the NLCA while employed at the Kachina station since May 24, 2003, full and immediate reinstatement to, or award of, the position of rural letter carrier academy instructor.

(d) Within 14 days after service by the Region, post at each its facilities located throughout the United States and its territories, where members of the bargaining unit set forth in the complaint are employed, copies of the attached notice marked "Appendix A."[24] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

[21] The complaint does not actually name the "Kachina station," but rather refers to it in paragraph 2(a) of the complaint by its address, 7339 East Williams Drive, Scottsdale, Arizona.

[22] The case cited by counsel for the General Counsel, *Electrical Workers Local 48 (Oregon-Columbia NECA)* 342 NLRB No. 10 (2004), is distinguishable on its facts, as I have found that in the matter before me, the requested remedy is "beyond the scope of the complaint."

[23] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[24] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Post at the same places and under the same conditions copies of "Appendix B" as soon as it is forwarded by the Regional Director.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Employer has taken to comply.

(B) The Respondent Union, National Rural Letter Carriers' Association (NRLCA), its officers, agents, and representatives, shall

1. Cease and desist from:

(a) Maintaining and enforcing any agreement, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process, that requires that an employee of the Respondent Employer be a member of the NLCA in order to serve as a rural letter carrier academy instructor;

(b) Causing the Respondent Employer to remove its employees from, or denying them appointment to, the position of rural letter carrier instructor based on their membership in the NLCA; and

(c) In any like or related manner restraining or coercing the Respondent Employer's employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind the rule that rural letter carrier academy instructors must be members of the NLCA, remove such rules from any and all employee publications or documents to which it is a party, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," and advise the Respondent Employer's employees in writing that this rule is no longer being maintained or enforced.

(b) Notify the Respondent Employer in writing that it has no objection to the reinstatement of Kathy O'Toole to the position of rural letter carrier academy instructor and the award to Jeffrey Houlter of the same position, as well as any other similarly situated employees of the Kachina station since May 24, 2003, with copies to the affected employees.

(c) Within 14 days after service by the Region, post at each of its business offices and meeting halls located throughout the United States and its territories copies of the attached notice marked "Appendix B."[25] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Furnish to the Regional Director signed copies of the aforesaid notice for posting by the Respondent Employer. Copies of the notice to be furnished by the Regional Director shall, after being signed by the Respondent Union be forthwith returned to the Regional Director.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Union has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

Dated at San Francisco, California, on February 17, 2005.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT maintain or enforce any agreement that requires that you be a member of the National Rural Letter Carrier's Association (NRLCA) in order to serve as a rural letter carrier academy instructor, including, but not limited to, such a rule as set forth in the "National Guidelines for the Quality of Work Life/Employee Involvement Process."

WE WILL NOT interrogate you regarding your or other employees' union or concerted activities, such as whether or not you are a member of the NRLCA.

WE WILL NOT threaten you with removal from your position as a rural letter carrier academy instructor because you resign from, or refuse to join, the NRLCA.

WE WILL NOT inform you that you must be a member of the NRLCA in order to be selected for, or to retain, the position of rural letter carrier academy instructor.

WE WILL NOT remove you from, or deny you appointment to, the position of rural letter carrier academy instructor because you resigned from, or refused to join, the NRLCA.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal labor law.

WE WILL rescind the rule that rural letter carrier academy instructors must be members of the NRLCA, remove such a rule from any and all employee publications, including the "National Guidelines for the Quality of Work Life/Employee In-

[25] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

volvement Process," and advise you in writing that such a rule is no longer being maintained or enforced.

WE WILL remove from our files any reference to the removal and/or rejection of Kathy O'Toole, Jeffrey Houlter, and any other similarly situated employees who were employed at the Kachina station in Scottsdale, Arizona, and who were removed from, or rejected for, the position of rural letter carrier academy instructor because of their nonmembership in the NRLCA; and WE WILL notify each of them in writing that this has been done.

WE WILL offer Kathy O'Toole, Jeffrey Houlter, and any other similarly situated employees who were employed at the Kachina station in Scottsdale, Arizona, and who were removed from, or rejected for, the position of rural letter carrier academy instructor because of their nonmembership in the NRLCA, full and immediate reinstatement to, or award of, that position.

UNITED STATES POSTAL SERVICE

APPENDIX B

NOTICE TO MEMBERS AND EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT maintain or enforce any agreement that requires that you be a member of the National Rural Letter Carriers' Association (NRCA) in order to serve as a rural letter carrier academy instructor, including, but not limited to, such a rule as set forth in the "National Guidelines for the Quality of Work Life/Employee involvement Process."

WE WILL NOT cause the United States Postal Service to remove you from, or deny your appointment to, the position of rural letter carrier academy instructor because you resigned from, or refused to join, the NRLCA.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Federal labor law.

WE WILL rescind the rule that rural letter carrier academy instructors must be members of the NRLCA, remove such a rule from any and all employee publications, including the "National Guidelines for the Quality of Work Life/Employee Involvement Process," and advise you in writing that such a rule is no longer being maintained or enforced.

WE WILL notify the United States Postal Service in writing that we have no objection to the reinstatement of Kathy O'Toole to the position of rural letter carrier academy instructor and the award to Jeffrey Houlter of the same position, as well as any similarly situated employees employed at the Kachina station in Scottsdale, Arizona; and WE WILL send copies of that correspondence to those employees.

NATIONAL RURAL LETTER CARRIERS' ASSOCIATION